

Application No.: 10/667,129

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Docket No.: 08226/1203097-US1

REMARKS

Claims 1-82 are now pending in this Application. The second non-final Office Action (OA) dated June 23, 2005 rejected Claims 1-82. None of the pending claims are amended. Applicants submit that the pending claims are patentable for the reasons discussed in detail below.

The 35 U.S.C. §103 rejection of Claims 1-82 over Allan & Bass:

Section 4 of the OA indicates that Claims 1-82 are rejected under 35 U.S.C. §103(a) as being unpatentable over Allen et al. (U.S. Patent No. 6,526,456, hereinafter referred to as Allan) in view of Bass et al (U.S. Patent No. 6,744,446, hereinafter referred to as Bass). The OA does not address each independent claim individually. Instead, the OA discusses claim limitations that are substantially similar in each of the independent Claims 1, 33, 36, 37, 44, 76, 79, and 82. Consequently, the discussion below applies to all of the independent claims.

Allan was cited in a prior non-final OA and the current non-final OA acknowledges that Allan does not disclose or suggest the limitation of assigning a collection of virtual containers to a set of users, including one or more users, each virtual container in the collection being configured to identify one or more software products that are rented by users in the set. However, the current OA indicates that Allan discloses portions of the stated limitation. Namely, the current OA indicates that Allan discloses "a set of users including" and "identify one or more software products that are rented by users in the set." (OA dated 6/23/05, pg. 2, lines 17-18.) The OA does not indicate which element of Allan discloses or suggests the claimed "set of users." However, the cited portions of Allan refer to "authorized subscribers," which applicants will presume for arguments sake is the element of Allan that the OA intends to equate to the claimed "set of users." Similarly, the OA does not specify an element of Allan that discloses or suggests the claimed limitation of "identify one or more software products that are rented by users in the set." However, the cited portions of Allan include the statement that "[t]his invention relates to the distribution and controlled use of software products, and is particularly concerned with what is becoming known as software rental." (Allan, col. 1, lines 4-6.)

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carries data from one node to another, separated by many intermediate nodes. . . . Part of the function of the user at network or sub-network management level is to configure the virtual containers to provide the required semi-permanent connections and to monitor the proper functioning of the network in providing them. (Bass, col. 1, lines 36-58.)

Although Bass uses the phrase "assigning virtual containers," it is clear that the meaning of this phrase does not disclose or suggest the claim limitations of assigning a collection of virtual containers to a set of users, wherein each virtual container is configured to identify one or more software products. Base may use the similar words, but Bass does not disclose or suggest the claim limitations, the plain meaning of which are clear from the claim language.

Applicants further contend that Bass and Allan are not even in analogous fields. Allan is directed to controlling use of a software product by having an authorization agent supply authorizing software to an authorized subscriber during execution of the software product. (See Allan, abstract, and col. 2, lines 20-32.) In contrast, Bass is directed to "an improved visual interface [] for a user at network or sub-network management level in a hierarchical network such as a SDH or SONET network." (Bass, col. 1, line 66 through col. 2, line 2.) One of ordinary skill in the art of would not be motivated to select Bass, let alone combine Bass with Allan.

The OA states that "[i]t would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the software rental service of Allan by including the limitation detailed above as taught by Bass because this would improve software rental product." (OA, pg. 3, lines 4-7.) However, modifying Allan to enable a user to configure a network by assigning virtual containers that carry data at varying speeds does not result in the claimed invention. Further, there is no recognizable "improvement" to a software rental product. The OA does not specify what such improvement would be. Consequently, the OA has not identified any motivation to combine the references, and thus has not established a prima facie case of obviousness.

For the reasons above, Allan and Bass do not disclose all of the limitations of independent Claims 1, 33, 36, 37, 44, 76, 79, and 82, and there is not motivation to select and

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combine Bass with Allan. Accordingly, the rejection of independent Claims 1, 33, 36, 37, 44, 76, 79, and 82 under 35 U.S.C. §103(a) should be withdrawn. Dependent claims are patentable for at least the same reasons as the independent claims from which the dependent claims depend. Thus, dependent Claims 2-32, 34, 35, 38-43, 45-75, 78, 80, and 81 are patentable for at least the same reasons as their corresponding independent claims. Accordingly, the rejection of dependent Claims 2-32, 34, 35, 38-43, 45-75, 78, 80, and 81 under 35 U.S.C. §103(a) should also be withdrawn.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

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Respectfully submitted,

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